IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO. 83 OF 2005
IN
ARBITRATION PETITION NO.221 OF 2005

TRENT LIMITED ... PETITIONERS.
VS.
AMAZON DEVELOPERS & ORS. ... CONTEMNOR RESPONDENTS.
AND.
PANTALOON RETAIL
(I) LTD. & ANR. ... ORIG.RESPDT.

MR. F.E.D'VITRE SR.ADVOCATRE WITH CHIRAG BALSARA & MS. S.VEDPATHAK I/B. MANEKSHAW & SETHNA FOR THE PETITIONERS.
MR. S.H.MEHTA I/B. KARTIKEYA & ASSOCIATS FOR RESPONDENT NOS. 1 & 2.
DR. V.V.TULZAPURKAR SR.ADVOCATE WITH J.J.KWARKADAS SR. ADV. & RAHUL CHITNIS I/B. WADIA GANDHY & CO. FOR RESPONDENT NOS. 3 TO 11.

Coram : S.K.Shah, J.
Date : March 24, 2006.

P.C.

1. Heard the learned Counsel on both sides.

2. The Petitioner claims that the Respondents have committed contempt of the Order of this Court, passed on 18th July, 2005 in Arbitration Petition, whereby the Petition was granted in terms of prayer clause (b). The terms of prayer clause (b) are as under :-

> "(b) The Respondents by themselves, their servants and agents be restrained by an Order and injunction of this Hon'ble Court from selling, transferring, creating any third party right or charge or inducting any person or dealing with the said premises admeasuring 37,000 square feet situate at Final Plot No. 45, Off. TPS -III at S.V.Road, Borivali (West), Mumbai 400 092, more particularly described in Exhibit 'A" hereto in any manner."

3. The contention of the Respondent Nos. 3 to 11 is that they were not parties to the aforesaid Arbitration Petition, where this injunction Order was passed in the Petition. However, the Respondent Nos. 3 to 11 were the intervenors.

4. The larned Counsel for the Petitioner submits that there is observation in paragraph 2 of the Order, dated 18th July, 2005 that so far as the claim of the intervenors is concerned, it is clear that the intervenors were clearly aware of the transaction between the petitioners and the respondent nos. 1 & 2 and, therefore, whatever transaction that has been entered into by them (intervenors) with the Respondent

Nos. 1 and 2, is subject to the transaction between the Petitioners and the Respondents. The learned Counsel for the Petitioner also points out the observation in last paragraph, which reads thus :-

> "... It is pertinent to note here that admittedly the Corporation has not issued any occupation certificate in relation to the building and therefore, there is no question of any loss being caused to anybody because of grant of temporary injunction restraining the respondents from transferring the property and directing the respondents to maintain status quo...."

5. What is to be noted is that even after having observed this, what was granted by the said Order, was the relief in terms of prayer clause (b), which clause has been set out herein above.

6. The learned Counsel for the Petitioner further submits that wording "Or dealing with the said premises" is wide enough, restraining anyone, even to deal with anyone, with any partner. He further submits that in respect of this property, the Respondent Nos. 3 to 11 have carried out several alterations and construction work in the said premises, which is in violation of the aforesaid Order. Against it, the learned Counsel for the Respondent Nos. 3 to 11 contends that the Respondent Nos. 3 to 11 were not party to the said petition. They were only intervenors and, their intervention was only to protect their right created by them occurring between themselves and respondent No. 1 which had taken place on 21st June==, 2003 under the registered agreement. That transaction was for purchase of the said premises for a price of 4, 50,75,000/-, under which they have also gave advance of Rs. 2.46 crores in October, 2991 and Rs. 80 lacs in November, 2002, totalling to Rs. 3,26,00,000/- and the balance amount of Rs. 1,24,75,000/- was agreed to be paid against Respondent No. 1 obtaining occupation certificate in respect of the building to be constructed on the said property.

7. The contention of the Respondents that since respondent Nos. 3 to 11 were not the parties to the petition, there is no question of relief granted by Order, dated 18trh July,2005 being operative against them. This appears to be the admitted position.

8. However, what is the contention of the Petitioners is that in view of the observations made in Paragraph 2 of the Order, dated 18th July, 2005, the rights of the Respondent Nos. 3 to 11, were subject to the transaction between the Petitioners and the Respondents and, therefore, the Respondent Nos. 3 to 11 shall be taken to be the agents of the Respondent No. 1 against whom the injunction operated. However, it is difficult to agree with this submissions. Even, there is no averment made in the petition against Respondent No. 3 to 11 being the agents of Respondent Nos. 1 and 2. Apart from this, while exercising the limited jurisdiction in the contempt petition, there has to be a specific Order against the contemnors i.e.

the Respondent Nos. 3 to 11, who allegedly carried out the construction work. However, there is no such Order, strictly speaking as against the Respondent Nos. 3 to 11. Since the work had been carried out by Respondent Nos. 3 to 11, there is no question of Respondent No. 1 & 2 having committed contempt of the Order of this Court.

9. Under the circumstances, the contempt petition stands dismissed.

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[S.K.Shah , J.]